Supreme Court, U.S.
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Docket Number:

In The
Supreme Court of the United States

October Term, 1998

JACK DAVID KELLY, an individual

PETITIONER

versus

ESCAMBIA COUNTY,

RESPONDENT

and

HOME BUILDERS OF WEST FLORIDA, INC.

INTERVENER

Petition for Writ of Certiorari
To The Supreme Court of Florida

Jack David Kelly, Pro Se
3331 Summit Blvd., #87
Pensacola, FL 32503
(850) 438-4785
Petitioner

8988

QUESTIONS PRESENTED FOR REVIEW

1-A Did the lower courts of Florida deny Jack David Kelly, the Petitioner, his personal, social, civil and moral rights as a matter of constitutional rights and laws of the United States, in respect to a civil society by specifically declaring valid, wrongly, section 120-569(2)(d) Florida Statutes (Supp 1996), Rule GOQ-2.019(4) Florida Administrative Code and wrongly, the manner provided in the Florida Rules of Civil Procedure in dismissing Division of Administrative Hearing, (DOAH) Case No. 97-002835 GM, Department of Community Affairs (D.C.A.) File No.: LC-97-C01 by Donald R. Alexander, Administrative Law Judge, thereby abridging the Petitioner's, Jack David Kelly, privileges and immunities of citizens of the United States in violation of the Fourteenth Amendment, Section 1 of the U.S. States Constitution?

1-B Did the lower courts of Florida deny Jack David Kelly, the Petitioner, his personal, social, civil and moral rights in respect to a civil society his life, liberty or property without due process of law?

1-C Did the lower courts of Florida violate Jack David Kelly's, the Petitioner, personal, social, civil and moral constitutional rights of equal protection of the laws?

Of which protection and rights thereof is guaranteed by the Fourteenth Amendment, Section 1 of the U.S. Constitution.

There can be no more compelling constitutional or federal law violations than the rights and protection that are guaranteed by Title 18 United States Code, Section 241.

2-A Did the lower courts, judges, attorneys, firms or individuals conspire to injure, oppress, threaten or intimidate Jack

David Kelly, the Petitioner, in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having exercised the same?

2-B Did two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured?

3. Did the lower courts, judges, attorneys, firms or individuals under color of any law, statute, ordinance, rule, regulation or custom, willfully subject Jack David Kelly, the Petitioner, to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, protected and secured by Title 18 United States Code Section 242 in this instant case and its interrelated cases?

4. Did the lower courts, judges, attorneys, firms or individuals violate Jack David Kelly's, the Petitioner, rights and violate their responsible duty of protection thereof by misuse of power possessed by virtue of state law and made possible only because the wrongdoers is clothed with the authority of state law, in their actions or inaction taken "under color of state law?" His inherent rights, rights secured and protected by U.S. Supreme Court's DEFINITION of violation of color of authority. (Ref: *Constitutional Law* for police by Dr. John C. Klotter, Dean, School of Police Administration and Dr. Jacqueline R. Kanovitz, Prof. of Law, University of Louisville page 544).

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LISTED PARTIES

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OPINIONS LISTED

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS
and Jack DAVID KELLY,
Petitioners

vs. Case no. 97-2835GM

ESCAMBIA COUNTY,
Respondent

and

HOME BUILDERS OF WEST FLORIDA, INC.,
Intervener.

FINAL ORDER

This cause came before the undersigned on a Verified Second Motion for Sanctions and Dismissal filed by Respondent, Escambia County (County). The motion is supported by Intervener, Home Builders of West Florida, Inc. By the motion, the County seeks the imposition of sanctions, including the dismissal of the second Verified Petition for Formal Administrative Hearing filed by Petitioner, Jack David Kelly (Kelly), for his willful failure to comply with an order requiring him to submit to deposition. The verified allegations in the motion have not been contradicted. For the following reasons, the motion is granted.

The facts giving rise to this controversy are undisputed. On January 25, 1996, the County adopted a new Land Development Code by Ordinance Number 96-3. Although not contemplated by the statute under which the Code was adopted, on August 26, 1996, petition, with prejudice, necessarily ends all administration in this case. See Section 163.3213(3), Florida Statues (Supp. 1996). It is therefore,

ORDERED that Jack David Kelly's second Verified Petition for Formal Administrative Hearing is dismissed, with prejudice, and case no. 97-2835GM is closed.

DONE AND ORDERED this 12th day of December, 1997, in Tallahassee, Leon County, Florida.

By: /s/ DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675, SUNCOM 278-9675
Fax Filing (904) 921-6847
filed with the Clerk of the
Division of Administrative Hearings
this 8th day of October, 1997

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS
and JACK DAVID KELLY,
Appellants,
v.
ESCAMBIA COUNTY and HOME
BUILDERS OF WEST FLORIDA,
INC.,
Appellees.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND
DISPOSITION THEREOF IF FILED

CASE NO. 98-13

Opinion filed June 1, 1998.

An appeal from an order of the Division of Administrative Hearings. Donald R. Alexander, Administrative Law Judge.

Jack David Kelly, pro se, appellant.

William C. Merrill, II, Esquire, of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, Sarasota, and Robert A. Emmanuel, Esquire, of Emmanuel, Sheppard & Condon, Pensacola, for appellees.

PER CURIAM.

AFFIRMED. Florida Rule of Appellate Procedure 9.315(a).

ERVIN, BOOTH and VAN NORTWICK, JJ., concur.

SUPREME COURT OF FLORIDA

TUESDAY, SEPTEMBER 8,1998

JACK DAVID KELLY,
Appellant/Petitioner,

V.

CASE NO. 93,799

DISTRICT COURT OF APPEAL,
I ST DISTRICT - NO. 98-13

ESCAMBIA COUNTY, et -al.,
Appellees/Respondents.

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (I 5) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy

TEST:

cc: Hon. Jon S. Wheeler, Clerk
Mr. Jack David Kelly
Mr. Robert A. Emmanuel
Mr. William Merrill, III

Sid J. White
Clerk Supreme Court

JURISDICTIONAL AUTHORITY

of

The Supreme Court of the United States of America

For

A Review of a Petition for a Writ of Certiorari to the Supreme Court of Florida is established by the following rights:

Principle 218 from the First Amendment of the Constitution of the United States of America, states that Congress shall make no law abridging the right of the people to petition the government for redress of grievance.

This provision guarantees the Petitioner, Jack David Kelly, the "*people*" the right to be able to petition the government without intervention by the authorities as in this case, Case no. 93799, identified as Exhibit "1" hereto attached and made a part thereof.

In addition and foremost JURISDICTION of the Supreme Court of the United States of America is guaranteed by a classification of rights with respect to the Constitution of civil society. "The rights of persons, considered in their natural capacities, are two sorts - absolute and relative.

ABSOLUTE, which are such as appertain to particular men, merely as individuals or single persons; RELATIVE, which are incident to them as members of society, and standing in relations to each other."

Rights are also classified in constitutional law as natural, civil and political, to which there is sometimes added the class of "personal rights."

Natural rights are those which grow out of the nature of man and depend upon a personality, as distinguished from such as are created by law and depend upon civilized society; or there are those which are plainly assured by natural law; or those which by fair deduction from the present PHYSICAL, MORAL SOCIAL

and RELIGIOUS characteristics of man. He must be invested with, and which he ought to have realized for him in a jural society, in order to fulfill the ends to which his nature call him, such as the rights of LIFE, LIBERTY, PRIVACY, and GOOD REPUTATION.

Civil rights are such as belong to every citizen of the state of country or in a wider sense, to all its inhabitants, and or not connected with the organization of administration of government. They include the rights of PROPERTY, MARRIAGE, EQUAL PROTECTION OF THE LAWS, FREEDOM OF CONTRACT, TRIAL BY JURY, ETC. or as otherwise defined civil rights are rights appertaining to a person by virtue of his citizenship in a state or community.

Such terms may also refer, in its very general sense, to rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the Thirteenth and Fourteenth Amendments to the Constitution by the various acts of Congress (eg, Civil Rights Acts) made in pursuance thereof.

See Bill of Rights, Civil Liberties, Civil Rights Acts.

Political rights consist in the power to participate, directly or indirectly in the establishment of administration of government such as the RIGHT OF CITIZENSHIP that of SUFFRAGE, the RIGHT TO HOLD PUBLIC OFFICE and the RIGHT OF PETITION.

JURISDICTIONAL AUTHORITY AS A MATTER OF CONSTITUTIONAL RIGHT AND LAWS OF THE UNITED STATES

Standing Hearing - October 16, 1997

DOAH Case No.: 97-002835 GM

D.C.A. File no.: LC-97-C01

1. Fourteenth Amendment, Section 1 of the U.S .Constitution:

"...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

2. Title 18 United States Code, Section 241:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise of enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years of for life."

3. Title 18 United States Code, Section 242:

"Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States ... shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any terms of years of for life."

4. U.S. Supreme Court's definition of violation of color of authority:

> "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with authority of state law, is action taken 'under color of' state law'."
> (Re: *Constitutional Law for Police* by Dr. Klotter C., Dean, School of Police Administration and Dr. Jacqueline R. Kanovitz, Professor of Law, University of Louisville, page 544)

Escambia County failed to appear, with no notice or reason why not for this scheduled hearing of October 16, 1997, 19:30 a.m., at The Chappie James Bldg., Pensacola, Florida.

Present at the above:

1. The Petitioner jack David Kelly
2. Jim Veal
3. Robert Emmanuel, Attorney for Home Builders of West Florida, Inc.

REQUIRED STANDARDS OF CONDUCT

OF PUBLIC OFFICIALS

DOAH Case no.: 97-002835 GM

D.C.A. File No.: LC-97-C01

1. **Principle 212 from Article VI.3**

> "All elected representatives and all officers and administrators of both the United States and the individual states shall take an oath or affirmation that they shall support this Constitution."

This provision gave all Americans the RIGHT to have only those legislators and administrators in charge of their affairs who have made a solemn commitment, under oath, to support the constitutional principles of the United States.

At the time the Constitution was adopted there were many Americans who had a much stronger sense of loyalty toward their own state than toward the Union. In their minds the national government was not yet the "Supreme" government of the land. This provision was designed to remind all officials, both state and federal, that their first loyalty was to the federal Constitution.

The presidential oath is set forth in the Constitution as follows:

> "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect and defend the Constitution of the United States."

It is interesting, as we have mentioned earlier, that when Washington was asked to take the oath at the time of his inauguration on April 30, 1789, he did so, and then added the words "So help me God!" This was not an official part of the oath, but every newly elected President thereafter did the same. In the midst of the war between the states, Congress decided to

make this an official part of the oath. Therefore, on July 2, 1862, the official oath had the words added to the end "So help me God."

All United States officers lower in rank than the President take oaths similar to the presidential oath. However, an officer being sworn into an office of a particular state promises to uphold and defend the state constitution as well as the national Constitution.

The military oath is somewhat more detailed and elaborate than the presidential oath. It states:

> "I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the president of the United States and the orders of the officers appointed over me, according to the regulations and the uniform Code of Military Justice."

It should be mentioned that a few religious groups object not using the word "swear" in taking the oath because of the scripture which says "Swear not at all" (Matthew 5:34). All such individuals are therefore allowed to say that they "affirm" the contents of the oath. Nevertheless, under the law an affirmation is as binding as oath and enforced as such.

The best known oath is the judicial oath required of all who testify in the American courts. It is read to the witness as follows:

> "Do you solemnly swear (or affirm) that you will tell the truth, the whole truth, and nothing but the truth, so help you God?"

The response must be "I do" or the witness will be allowed to give testimony in the court.

Questions and answers during the debates included the following:

- *What is the true significance of an oath?*

The Sanctity of the Oath. Iredell:

"According to the modern definition of an oath, it is considered a 'solemn appeal to the supreme being for the truth of what is said, by a person who believes in the existence of a supreme being and in a future state of rewards and punishments according to that form which will bind his conscience most.' It was long held...none but Jews and Christians could take an oath; and heathens were altogether excluded...Men at length considered that there were many virtuous men in the world who had not had an opportunity of being instructed wither in the Old or New Testament, who yet very sincerely believed in a supreme being, and in a future state of rewards and punishments...Indeed, there are few people so grossly ignorant or barbarous as to have no religion at all. And if none but Christians or Jews could be examined upon oath, many innocent persons might suffer for want of the testimony of others. In regard to the form of an oath, that ought to be governed by the religion of the person taking...A man who was a material witness in a cause refused to swear upon the book and was admitted to swear with his uplifted hand. The jury had a difficulty in crediting him; but the chief justice told them he had, in his opinion, taken as strong as oath as any of the other witnesses...

In England...a person... was admitted to take an oath according to the rites of his county, though he was a heathen...Not believing in the Old or New Testament, he could not be sworn in the accustomed manner, but was sworn according to the form of the Gentoo(Hindu) religion, which he professed, by touching the foot of a priest. It appeared that, according to the tenets of this religion, its members believed in a supreme being and in a future state of rewards and punishments. It was accordingly held by the judges...that it was probable those of that religion were equally bound in conscience by an oath according to their form of swearing, as they themselves were by one of theirs, and that it would be a reproach to the justice of the country if a man, merely because he was of a different religion from their own, should be denied redress of an injury he had sustained. Ever since this great case it has been universally considered that, in administering an oath, it is only necessary to inquire

if the person who is to take it believes in a supreme being and in a future state of rewards and punishments. If he does, the oath is to be administered according to that form which is supposed will bind his conscience most. It is however, necessary that such a belief should be entertained, because otherwise there would be nothing to bind his conscience most. It is however, necessary that such a belief should be entertained, because otherwise there would be nothing to bind his conscience that could be relied on; since there are many cases where the terror of punishment in this world for perjury would not be dreaded...We may, I think, very safely leave religion to itself; and as to the form of the oath, I think this will be trusted to the general government, to be applied on the principles I have mentioned."

The Oath Does Not Cover Unconstitutional Elements. MacLaine:

"Can any government exist without fidelity in its officers? Ought not the officers of every government to give some security for the faithful discharge of their trust? The officers are only to be sworn to support the Constitution, and therefore will only be bound by their oath so far as it shall be strictly pursued. No officer will be bound by his oath to support any act that would violate the principles of the Constitution."

• *Why were the state constitutions not included in the federal oath?*

Federal Officers Not Subordinate to State Constitution. Madison:

"It has been asked why it was thought...unnecessary that a like oath should be imposed on the officers of the United States in favor of the state constitutions...

The members of the federal government will have no agency in carrying the state constitutions into effect. The members and officers of the state governments, on the contrary, will have an essential agency in giving effect to the federal Constitution. The election of the President and Senate will depend in all cases, on the legislatures of the several states. And the election of the House of

Representatives will equally depend on the same authority in the first instance; and will, probably forever be conducted by the officers and according to the laws of the states.

2. Principle 213 from Article VI.3

"No religious test shall ever be required as a qualification for any office or public trust in the United States."

This provision allows any American citizen the RIGHT to serve in any office or position of trust in the United States without reference to his or her religious beliefs or affiliation.

Many of the early colonies were established by groups of people with strong religions convictions and those serving in public office were required to commit themselves to certain religious tenets. This automatically excluded from public offices those who had contrary views. For this reason the framers of the Constitution provided that no "religious test" could be required for an office in the national government (in which a great variety of beliefs and religious tenets - even atheism - would be represented).

The founders responded to a number of questions related to this provisions.

- *What is wrong with a religious test?*

Religious Test Deprives Some of their Basic Civil Rights. Shute:

"To establish a religious test as a qualification for offices in the proposed federal Constitution, it appears to me, sir, would be attended with injurious consequences to some individuals, and with no advantage to the whole.

By the injurious consequences to individuals, I mean that some, who in every other respect are qualified to fill some important post in government, will be excluded by their not being able to stand the religious test; which I take to be a privation of part of their civil rights.

Nor is there to me any conceivable advantage, sir, that

would result to the whole from such a test. Unprincipled and dishonest men will not hesitate to subscribe to anything that may open the way for their advancement, and put them into a situation the better to execute their base and iniquitous designs. Honest men, alone, therefore, however well qualified to serve the public would be excluded by it, and their country be deprived of the benefit of their abilities... Far from limiting my charity and confidence to men of my own denomination in religion, I suppose, and I believe, sir, that there are worthy characters among men of every denomination - among the Quakers, the Baptists, the Church of England, the Papists; and even among those who have no other guide, in the way to virtue and heaven, than the dictates of natural religion.

Religious Tests an Engine of Tyranny. Backus:

"Nothing is more evident, both in reason and the Holy Scriptures, than that religion is ever a matter between God and individuals; and therefore, no man or men can impose any religious test without invading the essential prerogative of our Lord Jesus Christ. Ministers first assumed this power under the Christian name; and then Constantine approved of the practice, when he adopted the profession of Christianity, as an engine of state policy, and let the history of all nations be searched from that day to this, and it will appear that the imposing of religious tests hath been the greatest engine of tyranny in the world."

• *Why was it necessary to include this provision?*

The Clause Necessary to Insure Religious Liberty. Iredell:

"I consider the clause under consideration as one of the strongest proofs that could be addressed, that it was the intention of those who formed this system to establish a general religious liberty in America...They (Congress) certainly have no authority to interfere in the establishment of any religion whatsoever...Is there any power given to Congress in matters of religion? Can they pass a single act to impair our religious liberty? If they could, it would be a just cause of alarm. If they could, sir, no man would have more horror against it than myself. Happily, no sect here is

superior to another. As long as this is the case, we shall be free from those persecutions and distractions with which other countries have been torn. If any future Congress should pass an act concerning the religion of the country, it would be an act which they are not authorized to pass, by the Constitution, and which the people would not obey. Everyone would ask 'Who authorized the government to pass such an act? It is not warranted by the Constitution, and is barefaced usurpation.'

How is it possible to exclude any set of men, without taking away that principle of religious freedom which we ourselves so warmly contend for? This is the foundation on which persecution has been raised in every part of the world...If you admit the least difference, the door to persecution is opened...But it is never to be supposed that the people of America will trust their dearest rights to persons who have no religion at all, or a religion materially different from their own. It would be happy for mankind if religion was permitted to take its own course and maintain itself by the excellence of its own doctrines. The divine Author of our religion could never wish for the support by worldly authority..."

• *But are we likely to end up with a collection of infidels in high office?*

Infidels in High Office Unlikely Unless People Become Infidels Themselves. Spaight:

"I do not suppose an infidel or any such person will ever be chosen to any office unless the people themselves be of the same opinion."

Members of All Religious Eligible for Public Office in the United States. Johnston:

"It appears to me that it would have been dangerous if Congress could intermeddle with the subject of religion. True religion is derived from a much higher source than human laws. When any attempt is made by any government to restrain men's consciences, no good consequence can possibly follow. It is apprehended that Jews, Mahometans, pagans, etc., may be elected to high offices under the government of

the United States. Those who are Mahometans, or any others, who are not professors of the Christian religion, can never be elected to the office of President or other high office, but in one of two cases. First, if the people of America lay aside the Christian religion altogether, it may happen. Should this unfortunately take place, the people will choose such men as think as they do themselves. Another case is, if any person of such descriptions should, notwithstanding their religion, acquire the confidence and esteem of the people of America by their good conduct and practice or virtue, they may be chosen."

GENOCIDE AS IT IS DEFINED

BY INTERNATIONAL LAW

On December 9, 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, largely at the insistence of the United States, and appropriate extracts are as follows:

Article II - In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the group;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) forcibly transferring children of the group to another group.

Article III - The following acts shall be punishable:

a) Genocide;
b) Conspiracy to commit genocide;
c) Direct and public incitement to commit genocide;
d) Attempt to commit genocide;
e) Complicity in genocide.

Article IV - Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals (UN Pamphlet DPI/1055 - December 1991-5m, pages 13-14)

NOTES:

1. International law provides a remedy before persecution rises to the level of actually killing anyone. Not even the President of the United States may claim immunity from prosecution for genocide. The First Amendment is not a defense against a charge of genocide.

STATEMENT OF THE CASE

On March 18, 1997 a verified petition for a formal administrative hearing was filed with the Department of Community Affairs, State of Florida by Jack David Kelly,pursuant to Section 163.3213, Florida Statutes (1995) and the Rules of the Department of Community Affairs, Chapter 9J-24.007(1)(5), listing standing rights, statement of fact and petitioning the Department of Community Affairs and Escambia County to submit Escambia County's Land Development Regulations for Administrative Review, listing constitutional standing rights and listing failures to adopt and inconsistencies with respect to Escambia County's Land Development (Ord. 96.3, adopted 1-25-1996) and Escambia County's comprehensive plan "Act" (Ord.93-20) goals, objectives, policies and their proper procedural requirements. The Petitioner, Jack David Kelly, is a resident, citizen and tax payer of the State of Florida and therefore res judicatal and collateral estoppel shall apply as well as all other constitutional rights, federal and state laws cited herein (the writ of certiorari) and therein (the verified petition), the Department of Community Affairs, State of Florida issued a letter of finding agreeing with Petitioner of inconsistencies of Escambia County's Land Development Regulations (L.D.R.) and the Local Governments Comprehensive Plan "Act".

Thereafter the Administrative Law Judge, Donald R. Alexander, and Escambia County's attorney totally misrepresented and falsely stated facts listed in Escambia County's verified 2nd Motion for Sanction and Dismissal Against Petitioner (11/26/97), to illegal and wrong dismissal of said case, violating the constitutional, federal laws and Florida Statutes rights of the Petitioner, Jack David Kelly's guaranteed rights,

privileges and immunities, cited herein (writ of certiorari) and the (Verified Petition for of the Land Development regulations, L.D. Code) that certainly substantially affects the Petitioner, Jack David Kelly. Petitioner, Jack David Kelly, timely responded (Response, 12/12/97) to said Motion and was denied an opportunity to present response as Court decided wrongly that the time period had lapsed.

Because said Response was not allowed to be heard, an Order (Order 12/12/97) was made by Administrative Law Judge, Donald R. Alexander to find Petitioner in failure to reply when in fact Petitioner did timely respond.

Wherefore, the Petitioner, Jack David Kelly, asks the Honorable Supreme Court of the United States to remand these cases (writ of certiorari) to the State of Florida, to forward its written decision to the Division of Administrative Hearings for a formal administrative hearing on the issues of consistency and concurrency of the land development regulations adopted pursuant to Ordinance No. 96-3 with the Escambia County Comprehensive Plan "Act" and that the newly appointed hearing officer enter an order finding Escambia County Land Development Regulations (L.D.R.) not consistent as required by the Local Governments Comprehensive Plan "Act", specifying detailed detailed provisions for remedial actions that would redress - bring the L.D.R.s into consistency, and concurrency requirement with Escambia County's comprehensive Plan Act, the Florida Statutes and the National Urban Policy.

Respectfully submitted this the 2ND day of February, 1999.

HAND RIZ

Jack David Kelly PRO SE

Jack David Kelly, Pro-se
3331 Summit Blvd., # 87
Pensacola, Florida
(850) 438-4785

REASON FOR GRANTING

For the protection and upholding of the Constitution of the United States of America and its inherent rights protection; equal protection of the people's health, safety, welfare and morals guaranteed therein, *so help me God.*

In keeping the scales, weights, and measures balanced and level for all equal rights and protection thereof.

CONCLUSION

There can be no more compelling reasons for a review by writ of certiorari than the questions presented for review, the statement of the case and the official and unofficial reports of the opinions and orders entered in by lower courts, administrative agencies of Florida and the attorneys' actions (conduct).

The Comprehensive Plan Act is a binding agreement on all responsible parties, as a matter of law and not subject to dismissal.

The failure of performance from the date of the charged act, the times, conditions, terms and covenants have invalidated the Comprehensive Plan Act of Escambia County, Florida.

Therefore the lower court's of Florida judgments, decrees, decisions, etc. were certainly prejudicial, without authority (color of law) and biased.

MOTION FOR ORAL ARGUMENT

Pursuant to Rule 28 Oral Argument, Jack David Kelly, the Petitioner, requests Oral Argument, to clarify any questions that might be needed for complete understanding of all issues and how they interact with each other.

App. I

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS
and Jack DAVID KELLY,
Petitioners
vs. Case no. 97-2835GM
ESCAMBIA COUNTY,
Respondent
and
HOME BUILDERS OF WEST
FLORIDA, INC.,
Intervenor.

FINAL ORDER

This cause came before the undersigned on a Verified Second Motion for Sanctions and Dismissal filed by Respondent, Escambia County (County). The motion is supported by Intervenor, Home Builders of West Florida, Inc. By the motion, the County seeks the imposition of sanctions, including the dismissal of the second Verified Petition for Formal Administrative Hearing filed by Petitioner, Jack David Kelly (Kelly), for his willful failure to comply with an order requiring him to submit to deposition. The verified allegations in the motion have not been contradicted. For the following reasons, the motion is granted.

The facts giving rise to this controversy are undisputed. On January 25, 1996, the County adopted a new Land Development Code by Ordinance Number 96-3. Although not contemplated by the statute under which the Code was adopted, on August 26, 1996, petition, with prejudice, necessarily ends all administration in this case. See Section 163.3213(3), Florida Statues (Supp. 1996). It is therefore,

ORDERED that Jack David Kelly's second Verified Petition for Formal Administrative Hearing is dismissed, with prejudice, and case no. 97-2835GM is closed.

DONE AND ORDERED this 12th day of December, 1997, in Tallahassee, Leon County, Florida.

By: /s/ DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675, SUNCOM 278-9675
Fax Filing (904) 921-6847
filed with the Clerk of the
Division of Administrative Hearings
this 8th day of October, 1997

App. II

Fourteenth Amendment, Section 1 of the U.S .Constitution:

"...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

App. III

Title 18 United States Code, Section 241:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise of enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years of for life."

Title 18 United States Code, Section 242:

"Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States ... shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any terms of years of for life."

App. IV

Principle 218 from the First Amendment of the Constitution of the United States of America, states that Congress shall make no law abridging the right of the people to petition the government for redress of grievance.

App. V

Supreme Court of Florida

TUESDAY, NOVEMBER 10, 1998

JACK DAVID KELLY,	*	
Appellant,	*	
v.	*	CASE NO. 93,799
ESCAMBIA COUNTY, et al.,	*	District Court of Appeal, 1st District - No. 98-13
Appellees.	*	

Appellant's Motion for Reinstatement is hereby denied.

OVERTON, SHAW, KOGAN, WELLS and PARIENTE, JJ., concur.

A True Copy

TEST: SUPREME COURT OF THE STATE OF FLORIDA

Sid J. White
Clerk, Supreme Court

TC

cc: Hon. Jon S. Wheeler, Clerk

Mr. Jack David Kelly
Mr. Robert A. Emmanuel
Mr. William Merrill, III

App. VI

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS
and Jack DAVID KELLY,
Petitioners
vs. Case no. 97-2835GM
ESCAMBIA COUNTY,
Respondent
and
HOME BUILDERS OF WEST
FLORIDA, INC.,
Intervenor.

ORDER

The parties are advised that the hearing in this case scheduled for 10:30 a.m., CST Tuesday, October 16, 1997, will be held in Room 501, the Chappie James Building, 160 governmental Center, Pensacola, Florida. govern yourselves accordingly.

DONE and ORDERED this 8th day of October, 1997, in Tallahassee, Leon County, Florida.

By: /s/ DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675, SUNCOM 278-9675
Fax Filing (904) 921-6847
filed with the Clerk of the
Division of Administrative Hearings
this 8th day of October, 1997

App. VII

163.3213 Administrative review of land development regulations. -

(3) After the deadline specified in s. 163.3202 for each local government to adopt land development regulations, a substantially affected person, with 12 months after final adoption of the land development regulations, may challenge a land development regulation on the basis that it is inconsistent with the local comprehensive plan. As a condition precedent to the institution of a proceeding pursuant to subsection (4), such affected person shall file a petition with the local government whose land development regulation is the subject of the petition outlining the facts on which the petition is based and the reasons that the substantially affected person considers the land development regulation to be inconsistent with the local comprehensive plan. The local government receiving the petition shall have 30 days after the receipt of the petition to respond. Thereafter, the substantially affected person may petition the state land planning agency not later than 30 days after the local government has responded or at the expiration of the 30-day period which the local government has to respond. The local government and the petitioning, substantially affected person may by agreement extend the 30-day time period within which the local government has to respond. The petition to the state land planning agency shall contain the facts and reasons outline in the prior petition to the local government.

App. VIII

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS
and Jack DAVID KELLY,
Petitioners
vs. Case no. 97-2835GM
ESCAMBIA COUNTY,
Respondent
and
HOME BUILDERS OF WEST
FLORIDA, INC.,
Intervenor.

ESCAMBIA COUNTY'S VERIFIED SECOND MOTION FOR SANCTIONS AND DISMISSAL AGAINST JACK DAVID KELLY

Respondent, ESCAMBIA COUNTY, by and through its undersigned counsel, files this Verified Second Motion for Sanctions and Dismissal, and moves this Court for an Order dismissing the Petitioner's cause of action with prejudice and awarding ESCAMBIA COUNTY attorney's fees and costs incurred by the County in the above-styled matter, pursuant to Rule 1.380(d) of the Florida Rules of Civil Procedure and in support thereof would state:

1. The deposition of JACK DAVID KELLY, the Petitioner (Mr. Kelly) is necessary in order for ESCAMBIA COUNTY to properly defend this action.

2. ESCAMBIA COUNTY properly noticed the taking of the deposition of JACK DAVID KELLY, the Petitioner on October 8, 1997 at the firm of Emmanuel, Sheppard & Condon.

3. Mr. Kelly filed an objection to such deposition, alleging that the time of the deposition was unacceptable due to prior business engagements and that the place of the deposition was

unacceptable due to the fact that Emmanuel, Sheppard & Condon had represented Tree Farm Development.

4. The attorney for ESCAMBIA COUNTY (Mr. Merrill) received a voice mail message from Mr. Kelly stating Mr. Kelly's availability for deposition on October, or 13-15 at the same time of day.

5. Mr. Merrill, over the course of several days, attempted numerous times to contact Mr. Kelly, receiving no answer at the phone number provided by Mr. Kelly.

6. In a good faith effort to facilitate Mr. Kelly's schedule and other objections, ESCAMBIA COUNTY filed an Amended Notice of taking Deposition Duces Tecum, wherein ESCAMBIA COUNTY scheduled the deposition for October 15, 1997, one of Mr. Kelly's agreed upon dates, and only one day prior to the hearing scheduled on t he standing issue at the court reporting firm of Wierzrieki & Stephenson Court Reporters. A copy of such notice is attached hereto as Exhibit "A".

7. Mr. Merrill made extensive travel arrangements from Sarasota to Escambia County to Attend the deposition.

8. On October 11, 1997, Mr. Kelly filed a "Reply to Notice of taking Deposition Deuces Tecum, October 15, 1997 at the court reporting firm of Wierzrieki & Stephenson Court Reporters, and for motion for hearing on same with oral argument "stating that the notice itself, as well as the date and location of the deposition were "unacceptable".

9. The reply described hereinabove was served on ESCAMBIA COUNTY by U.S. Mail and was not received until October 14, 1997, the afternoon prior to the deposition.

10. The allegations of the unacceptability of the notice, time and location were without support in fact or law.

11. The Notice of Taking Deposition Duces Tecum was in the form prescribed by Florida law, the deposition was to be taken at

the office of a certified court reporter, and the time of the deposition was chosen specifically to facilitate Mr. Kelly's schedule.

12. Mr. Kelly's reply could not be construed as a motion for protective order, and, thus, as a matter of law, did not operate to cancel or postpone the deposition.

13. At great expense, Mr. Merrill attended the deposition as scheduled.

14. Mr. Kelly did not appear for the deposition, as evidenced by the Certificate of Non-appearance, a copy being attached here as Exhibit "B".

15. The County filed a Motion to Compel Petitioner to Appear for Deposition, to Continue the Proceedings, and for Sanctions, which alleged the information set forth hereinabove.

16. This Court summarily continued the proceedings pending the deposition of Mr. Kelly.

17. On October 21, 1997, this Court rendered an Order on the remainder of the motions which granted the motion to compel and provided as follows:

> A) That Mr. Kelly was required to attend a properly noticed deposition.
> B) That the County shall make a good faith effort to contact Mr. Kelly to determine his dates of availability.
> C) That the County shall renotice the deposition based on the dates received by Mr. Kelly.
> D) That "in the event Kelly fails to cooperate with or respond to, the County's efforts to ascertain mutually acceptable dates, the County may, upon reasonable notice, reschedule the deposition to a date acceptable to its counsel."
> E) That ruling is reserved on the County's request for sanctions in the form of attorneys' fees and costs.
> F) That "in the event Kelly does not appear at the scheduled time and place as discussed more fully below, the Court will consider appropriate sanctions against

Kelly, such as the striking of pleadings, imposition of attorneys' fees and costs, or dismissal of his petition."

18. On Friday, October 31, 1997, Mr. Merrill, in good faith, contacted Mr. Kelly by telephone to determine the dates and times when Mr. Kelly would be available for deposition. Mr. Kelly stated during that telephone conservation that he would not provide any dates when he would be available, but that he would provide dates to Mr. Merrill, in writing, no later than November 3 or 4, 1997.

19. On Monday, November 3, 1997, having not received any deposition dates from Mr. Kelly, Mr. Merrill for the second time, in good faith, contacted Mr. Kelly by telephone to determine the dates and times when Mr. Kelly would be available for deposition. Mr. Kelly against stated that he would not provide any dates when he would be available.

20. On Tuesday, November 4, 1997, Mr. Merrill for the third time, in good faith, contacted Mr. Kelly by telephone to determine the dates and times when Mr. Kelly would be available for deposition. Mr. Kelly again stated that he would not provide any dates when he would be available.

21. On Tuesday, November 4, 1997, Mr. Merrill, in good faith, sent a letter (the fourth request since this Court's Order) to Mr. Kelly, summarizing the repeated good faith attempts to schedule Mr. Kelly's deposition following the Order compelling Mr. Kelly to cooperate. The letter reiterated the paragraph of the Order of this Court concerning the sanctions that could result from Mr. Kelly's failure to cooperate. A copy of the letter is attached hereto as Exhibit "C".

22. On Wednesday, November 5, 1997, Mr. Merrill in good faith had two (2) more telephone conversations with Mr. Kelly - the fifth and sixth requests since this Court Order - concerning his availability for deposition. On both occasions, Mr. Kelly refused

to provide any dates when he would be available for deposition.

23. On Wednesday, November 6, 1997, Mr. Merrill, in good, faith, sent a letter (the seventh request) to Mr. Kelly again requesting among other things, dates when Mr. Kelly would be available for deposition. A copy of the letter is attached hereto as Exhibit "D".

24. On Thursday, November 6, 1997, Mr. Kelly left a message with Mr. Merrill's office stating that a letter of available dates for his deposition would be received by Monday,November 10, 1997.

25. On Monday, November 10, 1997, in response to Mr. Kelly's failure to send a letter of available dates, Mr. Merrill, in good faith against attempted to reach Mr. Kelly by telephone. There was no answer at Mr. Kelly's residence.

26. On Tuesday, November 11, 1997, Mr. Merrill, in good faith against attempted to reach Mr. Kelly by telephone and received no answer.

27. On November 12, 1997, in response to Mr. Kelly's refusal to provide any available dates for his deposition whatsoever, the County properly noticed Mr. Kelly's deposition for November 20, 1997. A copy of the Notice is attached hereto as Exhibit "E".

28. On November 19, 1997, the day before the scheduled deposition, Mr. Kelly called Mr. Merrill and engaged in an extensive conference concerning Mr. Kelly's refusal to comply with the Order of this Court compelling him to appear for deposition - the eight good faith attempt to elicit cooperation from Mr. Kelly since this Court's October 21, 1997 Order. The conversation included the following:

A) When asked directly what his reasons were for his failure to cooperate or attend the scheduled depositions, Mr. Kelly responded that the notice was improper and unreasonable and he could not be pulled from other things.

B) When asked if he would be in Pensacola during the time of the scheduled deposition, Mr. Kelly sated that he would be in Pensacola, but would not attend the deposition for reasons that were not of Mr. Merrill's business.

C) When asked if a waiver of the document production requested for the deposition would facilitate Mr. Kelly's appearance, Mr. Kelly reiterated that he would not appear under any circumstance.

D) When asked if there were any dates that Mr. Kelly would be available Mr. Kelly responded that he would not tell Mr. Merrill and that his calendar was in another room. Mr. Merrill offered to hold while Mr. Kelly retrieved his calendar, which incensed Mr. Kelly, who informed Mr. Merrill that he would not retrieve the calendar and would not provide any dates whatsoever.

29. Mr. Kelly did not attend the properly noticed deposition scheduled for November 20, 1997. A copy of the Certificate of Nonappearance is attached hereto as Exhibit "F".

30. In good faith compliance with this Court's Order of October 21, 1997, Mr. Merrill has attempted on numerous (at least eight) occasions to facilitate Mr. Kelly's schedule in settling this deposition.

31. Under the terms of the Order, Mr. Merrill having received no cooperation from Mr. Kelly, set the deposition at a time convenient for the County and other parties.

32. Mr. Kelly's repeated refusal to cooperate with Mr. Merrill in setting the deposition and his refusal to attend the properly noticed deposition of November 20, 1997 are in direct defiance to the Order of this Court.

33. Mr. Kelly has, in bad faith and with a willful, deliberate, and contumacious disregard for the county and this Court, refused to cooperate with the taking of his deposition.

34. Mr. Kelly had the ability to cooperate and was given

every opportunity to do so by the parties to this litigation and this Court.

35. Mr. Kelly was warned of the consequences of his failure to comply with this Court's Order compelling him to attend the deposition both in the language of the Court's order itself and in the correspondence from Mr. Merrill and in the repeated discussions with Mr. Merrill.

36. Mr. Kelly's failure to comply was deliberate and with full knowledge of its consequences.

37. The County has been materially prejudiced by Mr. Kelly's failure to appear for his deposition and it cannot adequately protect and defend its rights in this litigation without Mr. Kelly's cooperation in this regard.

WHEREFORE, the Respondent, ESCAMBIA COUNTY, respectfully requests that this Court impose sanctions against Mr. Kelly, including an Order dismissing the above styled Petition with prejudice, an Order requiring Mr. Kelly to pay the attorney's fees and costs incurred by the County in its defense of the above styled action, and such other and further relief as this Court may deem just and proper.

Under penalties of perjury, I declare
I have read foregoing motion and
that the facts stated in it are true.

By: /s/ William W. Merrill, III
Icard, Merrill, Cullis, Timm,
Furen & Ginsburg, P.A.
Postal Drawer 4194
Sarasota, Florida 34230
(941) 366-8100
Florida Bar No. 341207
Attorney for Respondent

Notarized on November 26, 1997
by a certified notary public
signed and sealed

App. IX

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS
and Jack DAVID KELLY,
Petitioners
vs. Case no. 97-2835GM
ESCAMBIA COUNTY,
Respondent
and
HOME BUILDERS OF WEST
FLORIDA, INC.,
Intervenor.

RESPONSE

To Escambia County's verified second motion for sanctions and dismissal against Jack David Kelly.

SUMMARY STATEMENT

Summary Statement of true facts in reply to misrepresentations and concealments of a motion Mr. Merrill, an attorney, calls verified.

120.0569 Decisions which affect substantial interest pursuant to 120.569(e) irrelevant, immaterial or unduly repetitious evidence shall be excluded.

Fundamental fairness and justice mandates the above.

1. The deposition of JACK DAVID KELLY, the Petitioner (Mr. Kelly) is necessary in order for ESCAMBIA COUNTY to properly defend this action.

Item 1. False and misrepresentation, the truth is Mr. Merrill, the attorney is attempting to limit and misrepresent the perimeters of establishing substantially affected persons prior to a full hearing of due process of which is the constitutional right of the petitioner.

120.57 Decisions which affect substantial interest says, "The provisions of the section apply in all proceedings in which the substantial interest of a party are determined by an agency.

120.52(12) "Party" means:

(a) Specifically named person whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a mater of constitutional right, provision of statute, or provision of an agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interest will be affected by proposed agency action, and who makes an appearance as a party.

Item 1 is false the true fact is Mr. Merrill is attempting to limit the evidence, that is necessary to prove beyond any doubt by ultimate facts that the petitioner, Jack David Kelly, is certainly the most substantially affective person beyond the general public that can only be presented, heard, said evidence is included in said case, and can only be accomplished with and by a full administrative hearing of which is my right, Mr. Merrill is attempting to avoid this and limit the evidence by limiting the perimeters of establishing substantially affected person by false claiming it is necessary to deposition the petitioner prior to final hearing in order to properly defend the action when in fact it is a ploy to violate the petitioner right to justice and fair play by the Judicial System, the right to a full administrator hearing and complete due process of law guaranteed by state and federal provisions of rights guaranteed, the United States of America's Constitution and a civilized society.

2. *ESCAMBIA COUNTY properly noticed the taking of the deposition of JACK DAVID KELLY, the Petitioner on October 8, 1997 at the firm of Emmanuel, Sheppard & Condon.*

Item 2. Denied and false. Escambia County did not properly (1, timely, (2) or by proper procedure, and without coordination,

consideration, pursuant to 60Q-2 procedure requirements as stated in reply to October 8, 1997 Notice.

3. Mr. Kelly filed an objection to such deposition, alleging that the time of the deposition was unacceptable due to prior business engagements and that the place of the deposition was unacceptable due to the fact that Emmanuel, Sheppard & Condon had represented Tree Farm Development.

Item 3. Objection. Unacceptable due to the fact that Emmanual, Sheppard & Condon had represented Tree Farm development Corporation, Janet Landers, Escambia Assistant County Attorney listed said corporation and related cases on Escambia County docketing Statement; therefore, it is not alleged but a true fact.

The Exhibits of Strict proof sent, as ultimate facts of prior business engagements proves beyond any doubt that the petitioner Jack David Kelly was not available, therefore, is not allegement, just pure facts, further. This is ultimate facts that Mr. Merrill did not timely with cooperation or proper procedure with consideration for the petitioner, Jack David Kelly, schedule said notice, therefore the wording used by Mr. Merrill, the attorney is improper and misrepresentation of the true facts of said objections.

4. The attorney for ESCAMBIA COUNTY (Mr. Merrill) received a voice mail message from Mr. Kelly stating Mr. Kelly's availability for deposition on October, or 13-15 at the same time of day.

Item 4. Mr. Merrill received a voice mail from the petitioner, Jack David Kelly, stating that he was unavailable for the October 8th time and that Mr. Merrill should contact me for coordination, corporation, and consideration, hearing no response from Mr.Merrill, the petitioner Jack David Kelly place another call to Mr. Merrill and talked to Mr. Merrill's secretary for 12

minutes asking her to have him call me and asking her, since she said he was not there to tell me where he was so I could contact (call) him, she refuse to do so, I repeated several times to be sure and have him call me. He did not.

5. Mr. Merrill, over the course of several days, attempted numerous times to contact Mr. Kelly, receiving no answer at the phone number provided by Mr. Kelly.

Item 5. At the very best it is very doubtful Mr. Merrill attempted numerous times to contact me, the petitioner, by phone and the fact is if his secretary had contacted him as I requested her to do, since she would not and refused to tell me where he was so I could call him therefore Item 5 at the very best is a misrepresentation, will furnish phone bill for fact, truth of 12 minutes conversations with his secretary for the conversation stated above. Further the dates mentioned by Mr. Merrill certainly could not be confirmed unless by cooperation, coordination and consideration as required, and certainly as not a good faith attempt as he misstated and therefore misrepresented in his November 16th, 1997 Misrepresented/Verified Motion!!!

6. In a good faith effort to facilitate Mr. Kelly's schedule and other objections, ESCAMBIA COUNTY filed an Amended Notice of taking Deposition Duces Tecum, wherein ESCAMBIA COUNTY scheduled the deposition for October 15, 1997, one of Mr. Keliy's agreed upon dates, and only one day prior to the hearing scheduled on t he standing issue at the court reporting firm of Wierzrieki & Stephenson Court Reporters. A copy of such notice is attached hereto as Exhibit "A".

Item 6. False, Misrepresentation, the 15 of October, 1997 was not one of the agreed upon dates, or agreed upon place not confirmed, as falsely stated by Mr. Merrill.

7. Mr. Merrill made extensive travel arrangements from Sarasota to Escambia County to Attend the deposition.

Item 7. The claimed extensive travel arrangements from Sarasota to Escambia County to attend deposition was irresponsible action by Mr. Merrill as Mr. Merrill had to be a schedule standing hearing on the 15, and by the way Mr. Merrill (Escambia County) did not show up for said scheduled hearing with no reasoning or proper continuance, boy what confusion was created by Mr. Merrill's untimely improper and without any consideration for the petitioner, Jack David Kelly, rights and prior commitments, etc. It is impossible to work with the man with his attitude; therefore that is why I ask the Court to set hearings, etc following the proper procedure.

8. On October 11, 1997, Mr. Kelly filed a "Reply to Notice of taking Deposition Deuces Tecum, October 15, 1997 at the court reporting firm of Wierzrieki & Stephenson Court Reporters, and for motion for hearing on same with oral argument "stating that the notice itself, as well as the date and location of the deposition were "unacceptable".

Item 8. true, reason being that live witness with oral evidence under oath would be necessary to prove the unacceptability. evidence of a rigged illegal deposition without an attorney to represent me that Janet Landers cited in related cases in docketing Statement (Jack David Kelly, Maple Leaf Development Corporation vs. Tree Farm Development Corporation, et.)

The witness would and will be the attorney for Tree Farm development corporation, the court reports Wierzrieki & Stephenson and the attorney that was suppose to be representing me and Scott Foster a paralegal, partner? or something? with the attorney that was suppose to be representing me at this identified rigged, illegal, violation of the Florida Rules of Civil Procedure, deposition at that location with all of the witness that would be called for oral and under oath, live witness to

proved beyond any doubt the unacceptability for the improper notice as well as the date, not unavailable, location and firm was unacceptable. Proven by live witness under oath, properly subpoena and deposition at the requested hearing with oral argument, with relevant evidence, that would require and that will have a bearing on entire administrative hearing and ownership of land in procedure 60Q-2 that the court, judge order (the original order) as June 24, 1997, that clearly stated the governing law that would control all such pleadings. Therefore, a complaint should be filed with the Florida Bar and the Florida department of Professional business Regulations by this honorable court, the Division of Administrative Hearings (DOAH) in regards to Mr. Merrill's conduct in failing to abide by this honorable courts order and instruction, for the court judge's original amended order of June 24, 1997.

9. The reply described hereinabove was served on ESCAMBIA COUNTY by U.S. Mail and was not received until October 14, 1997, the afternoon prior to the deposition.

Item 9. False. The reply was mailed (served) on all parties and was delivered by Federal express on the 12, no one was there, note this in the type of continual misrepresentation Mr. Merrill has attempted to through his improper proceeding. This certainly would destroy the very meaning of the words Administrative Hearing and their reason for Judicial Fair play and Due Process.

10. The allegations of the unacceptability of the notice, time and location were without support in fact or law.

Item 10. False. Petitioner Jack David Kelly, was denied his lawful right to present relevant ultimate facts of the unacceptability of the notice, time, location, and court reporters; therefore, violating his rights of the Florida Rules of Civil Procedure, his social rights, State Constitution rights and his

United States of America Constitutional right as cited in the motion to reconsider.

11. The Notice of Taking Deposition Duces Tecum was in the form prescribed by Florida law, the deposition was to be taken at the office of a certified court reporter, and the time of the deposition was chosen specifically to facilitate Mr. Kelly's schedule.

Item 11. False

(a) As stated above there was absolutely no consideration for the petitioner, Jack David Kelly's schedule.

(b) Notice of depositions are clearly prescribed.

12. Mr. Kelly's reply could not be construed as a motion for protective order, and, thus, as a matter of law, did not operate to cancel or postpone the deposition.

Item 12. False. The Petitioner, Jack David Kelly, reply pointing out the unacceptability of the improper procedure in violation of the court's original amended order plainly setting forth the controlling documents, thus the controlling procedure, further the petitioner, Jack David Kelly, having being denied his social, civil, constitutional, Florida Rules of Civil Procedure rights to prove his objection. Again, the protection of these most sacred rights is of the utmost importance of a Judicial, civil society fair play; therefore, given these God given rights the reply certainly, no only lawful, also as a matter of fact and a right translate into a staying protective order as provided by his rights cited above.

13. At great expense, Mr. Merrill attended the deposition as scheduled.

Item 13. False.

(a) Irresponsible and with no regards or consideration of others and their right.s

(b) As stated before Mr. Merrill had to be present for the 16th

so called standing hearing, to emphasize the arrogance of Mr. Merrill, having to be in Pensacola the 16th, did not attend the 16th scheduled standing hearing as evidence by exhibit of witness Jim Veal, a local architect, thus showing his arrogant attitude towards the prescribed procedure, with no proper continuance, etc.

14. Mr. Kelly did not appear for the deposition, as evidenced by the Certificate of Non-appearance, a copy being attached here as Exhibit "B".

Item 14. In rely, Mr. Merrill did not attend and deliberately left in complete disregard of the proper judicial administrative procedure system. Again that certificate of non appearances prepared by the same firm that attended the before mentioned rigged deposition in the cases (civil fraud) that Janet Landers, assistant county attorney, identified as related cases.

15. The County filed a Motion to Compel Petitioner to Appear for Deposition, to Continue the Proceedings, and for Sanctions, which alleged the information set forth hereinabove.

Item 15. In reply, in view of all above and in complete disregard for the petitioner's Jack David Kelly, rights, this again shows the complete absents of consideration for the petitioner, Jack David Kelly, and his right of due process and shows absents of a civil society and its rights in this instant case and in Janet Landers, assistant county attorneys cited related cases.

Further, the court erred by not following the procedural requirement of 60Q-2. The issued order had to be in error because of its untimely order when the petitioner had timely filed his response, no order could not have been timely issued until 26th in proper procedure time frame.

16. This Court summarily continued the proceedings pending the deposition of Mr. Kelly.

Item 16. Mr. Merrill's statement of Item 16 is False, reason the court erred in continuing the proceeding by improper procedure and time which its time line computation was very bias and amounted to defeats perjury in view of all violations of regulations of proper procedures cited above, therefore Mr. Merrill alleged motion is completely without merit.

17. On October 21, 1997, this Court rendered an Order on the remainder of the motions which granted the motion to compel and provided as follows:

> *A) That Mr. Kelly was required to attend a properly noticed deposition.*
> *B) That the County shall make a good faith effort to contact Mr. Kelly to determine his dates of availability.*
> *C) That the County shall renotice the deposition based on the dates received by Mr. Kelly.*
> *D) That "in the event Kelly fails to cooperate with or respond to, the County's efforts to ascertain mutually acceptable dates, the County may, upon reasonable notice, reschedule the deposition to a date acceptable to its counsel."*
> *E) That ruling is reserved on the County's request for sanctions in the form of attorneys' fees and costs.*
> *F) That "in the event Kelly does not appear at the scheduled time and place as discussed more fully below, the Court will consider appropriate sanctions against Kelly, such as the striking of pleadings, imposition of attorneys' fees and costs, or dismissal of his petition."*

Item 17. In view of the indisputable facts stated above the court erred in granted the motion to compel.

(a) In reply, the deposition was not properly noticed, as instructed by the judges specific instructions and orders.

(b) False, In reply, see memorandum statement, etc. including request for the honorable court to set all hearings in view of all the confusion. Certainly there was no good faith or consideration made. by Mr. Merrill, just an arrogant attitude.

(c) False. No such dates was confirmed or made in good faith or consideration.

(d) There was or was not any reasonable or proper notice made.

(e) _____?

(f) I believe item F for these reasons stated above has not suggested or insinuated or has the discretion of elevated, legislative authority to do so, as it would destroy the very reasons for administrative hearing which are certainly to insure proper procedure and protection of the social, civil and constitutional right.

18. On Friday, October 31, 1997, Mr. Merrill, in good faith, contacted Mr. Kelly by telephone to determine the dates and times when Mr. Kelly would be available for deposition. Mr. Kelly stated during that telephone conservation that he would not provide any dates when he would be available, but that he would provide dates to Mr. Merrill, in writing, no later than November 3 or 4, 1997.

Item 18. I do not remember confirming any dates or making such a statement.

19. On Monday, November 3, 1997, having not received any deposition dates from Mr. Kelly, Mr. Merrill for the second time, in good faith, contacted Mr. Kelly by telephone to determine the dates and times when Mr. Kelly would be available for deposition. Mr. Kelly against stated that he would not provide any dates when he would be available.

Item 19. False. I said I could not confirm any dates.

20. On Tuesday, November 4, 1997, Mr. Merrill for the third time, in good faith, contacted Mr. Kelly by telephone to determine the dates and times when Mr. Kelly would be available for deposition. Mr. Kelly again stated that he would not provide any dates when he would be available.

Item 20. False. I said I could not confirm any dates at that time

either.

21. On Tuesday, November 4, 1997, Mr. Merrill, in good faith, sent a letter (the fourth request since this Court's Order) to Mr. Kelly, summarizing the repeated good faith attempts to schedule Mr. Kelly's deposition following the Order compelling Mr. Kelly to cooperate. The letter reiterated the paragraph of the Order of this Court concerning the sanctions that could result from Mr. Kelly's failure to cooperate. A copy of the letter is attached hereto as Exhibit "C".

Item 21. (1) I am not aware of any good faith, cooperation or consideration that has been made by Mr. Merrill.

(b) Considering the second part of Item 21, Mr. Merrill has from the very beginning of his involvement been repeatedly attempted to threaten, intimidate and harass me with threats of sanctions, in violation chapter 120 Administrative Procedure.

22. On Wednesday, November 5, 1997, Mr. Merrill in good faith had two (2) more telephone conversations with Mr. Kelly - the fifth and sixth requests since this Court Order - concerning his availability for deposition. On both occasions, Mr. Kelly refused to provide any dates when he would be available for deposition.

Item 22. I do not recall (remember all) these attempts related to by Mr. Merrill and do not believe this and believe me his is misrepresenting the factual number and things said. I believe I said to him that I could not confirm any dates at any time that I talked to him, and I would require strict proof thereof, perhaps telephone bills, etc., that would show ultimate facts of each conversation, which he his failed to show (ultimate facts).

23. On Wednesday, November 6, 1997, Mr. Merrill, in good, faith, sent a letter (the seventh request) to Mr. Kelly again requesting among other things, dates when Mr. Kelly would be available for deposition. A copy of the letter is attached hereto as Exhibit "D".

Item 23. Possibility.

24. On Thursday, November 6, 1997, Mr. Kelly left a message with Mr. Merrill's office stating that a letter of available dates for his deposition would be received by Monday,November 10, 1997.

Item 24. Denied do not believe I confirmed that.

25. On Monday, November 10, 1997, in response to Mr. Kelly's failure to send a letter of available dates, Mr. Merrill, in good faith against attempted to reach Mr. Kelly by telephone. There was no answer at Mr. Kelly's residence.

26. On Tuesday, November 11, 1997, Mr. Merrill, in good faith against attempted to reach Mr. Kelly by telephone and received no answer.

Item 25 & 26. Possibility. I was not available if that is what he is sayings?

27. On November 12, 1997, in response to Mr. Kelly's refusal to provide any available dates for his deposition whatsoever, the County properly noticed Mr. Kelly's deposition for November 20, 1997. A copy of the Notice is attached hereto as Exhibit "E".

Item 27. Denied, that the county properly noticed anything.

28. On November 19, 1997, the day before the scheduled deposition, Mr. Kelly called Mr. Merrill and engaged in an extensive conference concerning Mr. Kelly's refusal to comply with the Order of this Court compelling him to appear for deposition - the eight good faith attempt to elicit cooperation from Mr. Kelly since this Court's October 21, 1997 Order. The conversation included the following:

A) When asked directly what his reasons were for his failure to cooperate or attend the scheduled depositions, Mr. Kelly responded that the notice was improper and unreasonable and he could not be pulled from other things.

B) When asked if he would be in Pensacola during the time of the scheduled deposition, Mr. Kelly sated that he

would be in Pensacola, but would not attend the deposition for reasons that were not of Mr. Merrill's business.

C) When asked if a waiver of the document production requested for the deposition would facilitate Mr. Kelly's appearance, Mr. Kelly reiterated that he would not appear under any circumstance.

D) When asked if there were any dates that Mr. Kelly would be available Mr. Kelly responded that he would not tell Mr. Merrill and that his calendar was in another room. Mr. Merrill offered to hold while Mr. Kelly retrieved his calendar, which incensed Mr. Kelly, who informed Mr. Merrill that he would not retrieve the calendar and would not provide any dates whatsoever.

Item 28. (a) True, I simply said I had prior very important things at that time that I had to see about and that I was not available for that reason.

(b) yes, I did say to Mr. Merrill that I would be in Pensacola but would not be available, as stated in Item 28 and said to him that it was none of his business as during these times of threat, attempts to intimidate and harass me as you can plainly see, the very important things were and still are at this instant (time) family matters and very, very personal an serious and very sensitive and was and is none of Mr. Merrill's business.

(c) I say I could not appear under the circumstances above.

(d) At this point, I did become a little aggravated at his attitude with no consideration and threats after he smartalickly said "why can't you, you have to go the grocery store." insultingly.

29. Mr. Kelly did not attend the properly noticed deposition scheduled for November 20, 1997. A copy of the Certificate of Nonappearance is attached hereto as Exhibit "F".

Item 29. (a) I notified everyone that I could not and therefore would not.

(b) In view of the above, the copy of a certificate of non

appearance is simply another attempt of Mr. Merrill to misrepresent the facts and circumstance and specifically in view of me also notifying the court reports that I would not be available, I feel the court reporter giving Mr. Merrill a certificate of non appearance was and is improper and very bias, with not consideration of the petitioner jack David Kelly's rights.

30. In good faith compliance with this Court's Order of October 21, 1997, Mr. Merrill has attempted on numerous (at least eight) occasions to facilitate Mr. Kelly's schedule in settling this deposition.

Item 30. Denied I do not agree with what Mr. Merrill calls good faith, consideration, cooperation timely and proper procedure.

31. Under the terms of the Order, Mr. Merrill having received no cooperation from Mr. Kelly, set the deposition at a time convenient for the County and other parties.

Item 31. Denied.

32. Mr. Kelly's repeated refusal to cooperate with Mr. Merrill in setting the deposition and his refusal to attend the properly noticed deposition of November 20, 1997 are in direct defiance to the Order of this Court.

Item 32. Denied and certainly not in defiance to the order of the court, again Item 32 is an example of Mr. Merrill's misrepresentation of the true facts and his none consideration of others.

33. Mr. Kelly has, in bad faith and with a willful, deliberate, and contumacious disregard for the county and this Court, refused to cooperate with the taking of his deposition.

Item 33. Another very gross misrepresentation and intimidation and certainly untrue.

34. Mr. Kelly had the ability to cooperate and was given

every opportunity to do so by the parties to this litigation and this Court.

34. Denied, and untrue shown by the misrepresentations and arrogant attitude displayed by Mr. Merrill throughout proceedings.

35. Mr. Kelly was warned of the consequences of his failure to comply with this Court's Order compelling him to attend the deposition both in the language of the Court's order itself and in the correspondence from Mr. Merrill and in the repeated discussions with Mr. Merrill.

Item 35. An ultimate example of Mr. Merrill's admitting to the vile threats, intimidation and harassment stated above.

36. Mr. Kelly's failure to comply was deliberate and with full knowledge of its consequences.

Item 36. This statement of Item 36 by Mr. Merrill again shows the arrogant and complete disregard of consideration of others, thereby causing and creating intentionally all he confusion and disrespect of the petitioner's rights and thus resulting in request of petitioner asking this honorable court to coordinate by proper procedure and consideration to all parties to this proceeding.

37. The County has been materially prejudiced by Mr. Kelly's failure to appear for his deposition and it cannot adequately protect and defend its rights in this litigation without Mr. Kelly's cooperation in this regard.

Item 37. Denied. Mr. Merrill has certainly has committed perjury on the petitioner, jack David Kelly, by misrepresentation and concealments of the true and full facts in an attempt to create a very bias situation (false picture) for him an Escambia County, constituting civil fraud.

Wherefore, the plaintiff/petitioner sincerely prays this honorable court strike Mr. Merrill's unconscionable motion of misrepresentation and concealment of the full, true facts and

further request this honorable court to issue a cease & decease order of this type of conduct, (seriously unprofessional and unethical conduct) which puts in doubt any factually verification of the motion and statements.

I am sincerely thanking you in advance.

By /s/ JACK DAVID KELLY, PRO SE
3331 Summit Boulevard, # 87
Pensacola, FL 32503
(850) 438-4785

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof was sent via U.S. Mail to the above named addressee and Sherry A Spiers, Esquire, Department of Community Affiars, 2555 Shumard Oak Boulevard, Suite 315, Tallahassee, FL 32399-2100, Janet Lender, esuire and David G. Tucker, Esquire, 14 west Government Street, Room 411, Pensacola, FL 32501, and Robert A. Emmanuel, Esquire, P.O. box 1271, Pensacola, FL 32596 onthis the 12 th day of December 1997. And Mr. Merrill 2033 Main street, Suite 600, Sarasota, Florida Zip 34237.

By /s/ JACK DAVID KELLY, PRO SE
3331 Summit Boulevard, # 87
Pensacola, FL 32503
(850) 438-4785

App. X

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS
and Jack DAVID KELLY,
Petitioners
vs. Case no. 97-2835GM
ESCAMBIA COUNTY,
Respondent
and
HOME BUILDERS OF WEST
FLORIDA, INC.,
Intervenor.

I will divulge the ongoing family matter during that period of time that I could not be available that was very personal and very serious that was certainly none of Mr. Merrill's business, only in strict confidentially to this honorable court upon request.

Thanking you again.

By /s/ JACK DAVID KELLY, PRO SE

3331 Summit Boulevard, # 87
Pensacola, FL 32503
(850) 438-4785

App. XI

STATE OF FLORIDA
DIVISIONS OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS
and JACK DAVID KELLY,
Petitionsers,

CASE NO. 97-2835GM

and

ESCAMBIA COUNTY,
Respondent

HOME BUILDERS OF WEST
FLORIDA, INC.,
Intervenor.

MEMORANDA

Statement

The movant has timely conferred with all other parties of record and states other parties has not timely or properly responded to dates when they are not available for the above hearing, etc.

Therefore the movant requests this honorable court to set the time, date and place for the above to be consolidated and deposed of.

By /s/ JACK DAVID KELLY, PRO SE
3331 Summit Boulevard, # 87
Pensacola, FL 32503
(850) 438-4785

App. XII

Office of the
Director of Leisure Services

October 20, 1997

To Whom It May Concern:

On Wednesday, October 15, 1997, at 10:00 a.m., a meeting was held on the 5th floor of City Hall in the department of Leisure Services. Those in attendance were William J. Vickrey, Director of Leisure Services for the City of Pensacola; Mark Thornton, Director of Parks and Recreation for Escambia County; and Mr. Jack Kelly. The purpose of this meeting was to discuss Escambia County's Land Development Code and their Comprehensive Plan.

By/s/ Red Vickrey
William J. Vickrey
Director

App. XIII

James Veal
627 Bayshore Drive
Pensacola, FL 32507

21 October 1997

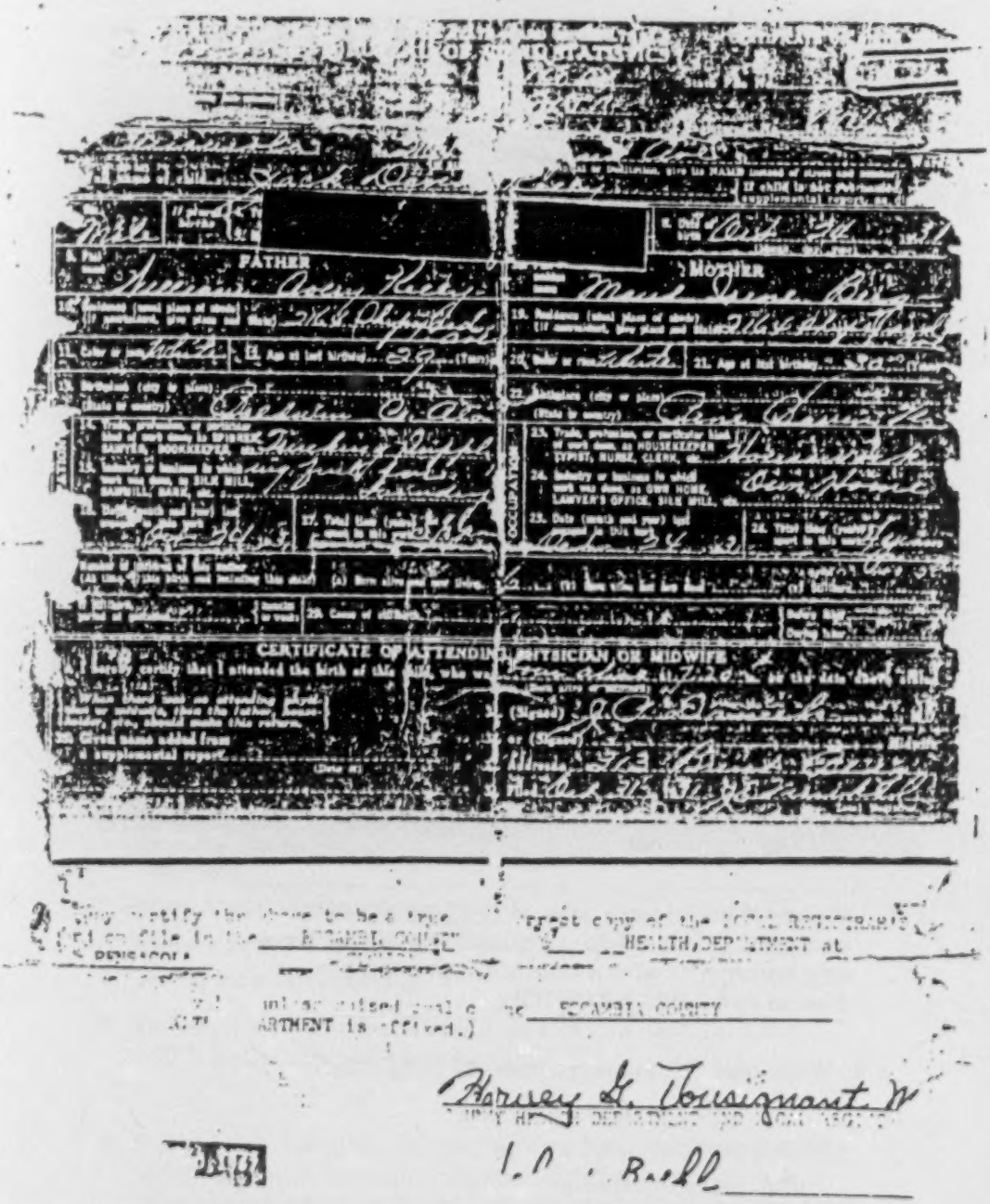
To Whom It May Concern:

On Thursday, October 16, 10:30 a.m. I was present at the scheduled meeting to be held in room 501 of the D.E.P. office building in Pensacola. Also present were Jack Kelly and Robert Emmanuel. No other parties were present.

Respectfully

By/s/JVeal
James Veal

App. XIV
JACK DAVID KELLY'S
Birth Certificate



Harvey G. Toussignant M

App. XV

Reciept from Hampton Inn for Jack Kelly

GUEST SATISFAC

JACK KELL
3331 SUMMIT BLVD APT 87
PENSACOLA FL 32503-4377

1. Were you a recent guest at the Hampton Inn hotel in

   Decatur, AL?

   ☐ Yes ☐ No

Please think of your stay at THIS hotel when completing the following questions. If you have any comments about another Hampton Inn, please call 1-800-HAMPTON.

2. What was the main purpose of THIS stay?

   ☐ Both work and pleasure/personal
   ☐ Only work
   ☐ Only pleasure/personal

App. XV

Reciept from Hampton Inn for Jack Kelly

1997

TION SURVEY

Thank you for your recent stay at Hampton Inn! Because we value your business, we would like your opinion as to how well we meet our goal of delivering excellent service to you every time you visit. A postage-paid return envelope has been included.

Sincerely,

Norman Cavin

Norman Cavin
Senior Director-Brand Marketing

4063125 LF-1 HALF-1

10087HA 000009449 3002

Please fill in the boxes as shown below:

CORRECT MARK ■

■

7. If you made an advanced reservation, please rate the person you spoke with using a report card grade where A is "Excellent" and F is "Poor."

	Excellent A	B	C	D	Poor F
Speed in which call was answered	☐	☐	☐	☐	☐
Friendliness/courtesy of agent	☐	☐	☐	☐	☐
Efficiency/knowledge of agent	☐	☐	☐	☐	☐
Overall reservation service	☐	☐	☐	☐	☐

8. During your stay, were you aware of the Hampton Inn 100% Satisfaction Guarantee?

☐ Yes ☐ No

9. For the following areas, please rate your satisfaction with THIS Hampton Inn using a report card grade where A is "Excellent" and F is "Poor." If not applicable, please mark the N/A column.

App. XVI

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS
and JACK DAVID KELLY,
Appellants,
v.
ESCAMBIA COUNTY and HOME
BUILDERS OF WEST FLORIDA,
INC.,
Appellees.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND
DISPOSITION THEREOF IF FILED

CASE NO. 98-13

Opinion filed June 1, 1998.

An appeal from an order of the Division of Administrative Hearings. Donald R. Alexander, Administrative Law Judge.

Jack David Kelly, pro se, appellant.

William C. Merrill, II, Esquire, of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, Sarasota, and Robert A. Emmanuel, Esquire, of Emmanuel, Sheppard & Condon, Pensacola, for appellees.

PER CURIAM.

AFFIRMED. Florida Rule of Appellate Procedure 9.315(a).

ERVIN, BOOTH and VAN NORTWICK, JJ., concur.

App. XVII

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT
STATE OF FLORIDA

JACK DAVID KELLY and DEPARTMENT OF COMMUNITY AFFAIRS, STATE OF FLORIDA,
Appellant,

CASE NO. 98-00013

NOTICE OF APPEAL

vs.

ESCAMBIA COUNTY, and HOME BUILDERS OF WEST 002835GM FLORIDA, INC.,
Appellees,

LOWER TRIBUNALS
DOAH CASE: 97-
D.C.A. FILE NO.: LC-97-CO I

NOTICE is hereby given that Appellant/Petitioner Jack David Kelly appeals to the Supreme Court of the State of Florida, the orders of this court rendered August 3, 1998 and June 1, 1998.

BASIS
PURSUANT TO FLORIDA RULES OF APPELLATE PROCEDURE - 1997

Rule 9.030, Jurisdiction of Supreme Court, Page 10
(a)Jurisdiction of Supreme Court.
(1)Appeal Jurisdiction.
(A)The Supreme Court shall review by appeal.
(ii) Decisions of District Courts of Appeal declaring invalid a state statute or a provision of the State Constitution AND
(2) Discretion Jurisdiction, the Discretionary Jurisdiction of the Supreme Court may be sought to review.
(A)Decisions of District Court of Appeal that
(i)Expressly declare valid a state statute
(ii) Expressly construe a provision of the state or federal constitution
(v)Pass upon a question certified to be of great public importance
(B)(i)To be of great public importance
(ii)To have a great effect on the proper administration of justice AND
Rule 9.120, Discretionary Proceedings to Review Decisions of

District Court of Appeal.

(a) Applicability. This rule applies to those proceedings that invoke the Discretionary Jurisdiction of the Supreme Court cited and described in Rule 9.030 (2) A, (i), (ii), (B), (i), (ii) AND (3) Original Jurisdiction. District courts of appeal may issue writs of mandamus, prohibition, quo warranto, and common law certiorari, and all writs necessary to the complete exercise of the courts' jurisdiction; or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof, or before any circuit judge within the territorial jurisdiction of the court. AND Rule 9.040, General Provisions.

(a) Complete Determination. In all proceedings a court shall have such jurisdiction as may be necessary for a complete determination of the cause.

(b)Forum. If a proceeding is commenced in an inappropriate court, that court shall transfer the cause to an appropriate court.

(c)Remedy. If a party seeks an improper remedy, the cause shall be treated as if the proper
remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.

(d) Amendment. At any time in the interest of justice, the court may permit any part of the proceeding to be amended so that it may be disposed of on the merits. In the absence of amendment, the court may disregard any procedural error or defect that does not adversely affect the substantial rights of the parties.

(e)Assignments of Error. Assignments of error are neither required nor permitted.

(f)Filing Fees. Filing fees may be paid by check or money order.

(g)Clerks' Duties. On filing of a notice prescribed by these rules, the clerk shall forthwith transmit the fee and a certified copy of the notice, showing the date of filing, to the court.

l Jurisdiction has been invoked under rule 9.030(a)(2)(A)(v) or (a)(2)(A)(vi), or if a certificate has been issued by a district court under rule 9.030(a)(.2)(b), the clerk of the district court of appeal shall transmit copies of the certificate and decision or order and any suggestion, replies, or appendices with the certified copy of the notice. Notices to review final orders of county and circuit courts in civil

cases shall be recorded. AND
Rule 9.900, The Notice is substantially in the form prescribed by 9.900.
Conformed copies of orders designated in this Notice of Appeal is attached in accordance with Rules 9.1 1 0(d) and 9.160(c) AND APPLICABILITY, Rule 9.040, General Provisions.
(a) Complete Determination. In all proceedings a court shall have such Jurisdiction as may be necessary for a complete determination AND Rule 9.315, Summary Disposition *(Florida Rules of Appellate Procedure)*
(b)Summary Reversal. After service of the Answer Brief in appeals under Rule 9.1 1 0,
9.130 or 9.140, or after service of the Reply Brief if a cross-appeal has been filed, the court may summarily reverse the order to be reviewed if the court finds that no meritorious basis exists for affirmance and the order otherwise is subject to reversal.

The true nature of these orders and basis for this appeal is the Lower Tribunes has DENIED the Petitioner/Appellant, Jack David Kelly, his social, civil, and constitutional rights guaranteed by the Constitution of the United States of America, the Constitution of the State of Florida, the Florida Statutes, International Law and Authorities of General Law cited in this instant case and all authorities cited in interrelated cases cited in this instant cases docketing statement and the mandate issued August 19, 1998 to Donald R. Alexander, Administrative Law Judge, Division of Administrative Hearings, whereas, in that certain cause filed in this court styled:

DEPARTMENT OF COMMUNITY AFFAIRS
STATE OF FLORIDA,
and JACK DAVID KELLY,
Appellant, CASE NO. 98-00013
vs.
ESCAMBIA COUNTY, and HOME BUILDERS OF WEST FLORIDA, INC., LOWER TRIBUNALS
DOAH CASE: 97-002835GM
D.C.A. FILE NO.: LC-97-CO I
Appellees,

identified as Exhibit "B". Hereto attached and made a part hereof and attached letter to Ms. Ann Cole, Clerk, Division of

Administrative Hearings, 1230 Appalachia Pkwy., Desoto Bldg., Tallahassee, FL 32399-3060, dated August 19, 1998, in which the Petitioner/Appellant, Jack David Kelly, is a party and therefore a very substantially affected person above all others and all said and written issues is of great public importance and certainly has a great effect on the proper and legal administration of justice by overlooking misapprehending or deliberate violating his inherent social, civil, and constitutional rights as a citizen of the United States of America.

By/s/ JACK DAVID KELLY, Pro-Se
1 Summit Boulevard # 87
Pensacola, FL 32503 (850) 438-4785

App. XVII
Exhibit
DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (850) 488 -6151
August 3, 1998
DATE

CASE NO. 98-13

JACK DAVID KELLY and DEPARTMENT OF COMMUNITY AFFAIRS, STATE OF FLORIDA,
Appellant, petitioner

CASE NO. 98-00013

vs.

ESCAMBIA COUNTY, and
HOME BUILDERS OF WEST
Appellees. respondent

BY ORDER OF THE COURT:

Appellant's motion for rehearing, clarification, and certification of this court's decision of June 1, 1998, is denied.

Appellee's request for an award of attorney's fees is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original--court order.

By/s/Jon S. wheeler, Clerk

By:
Deputy Clerk

Copies:

Jack D. Kelly
David G. Tucker
Janet Lander
Robert A. Emmanuel
William W. Merrill, III

App. XVIII

IN THE SUPREME COURT OF FLORIDA
500 SOUTH DUVAL STREET
TALLAHASSEE, FLORIDA 32399-1927

JACK DAVID KELLY and DEPARTMENT OF COMMUNITY AFFAIRS, STATE OF FLORIDA,
Appellant,

CASE NO. 93-799

APPEAL TO THE SUPREME COURT OF FLORIDA

ESCAMBIA COUNTY, and HOME BUILDERS OF WEST FLORIDA, INC.,
Appellees.

LOWER TRIBUNALS: 98-00013
DOAH CASE: 97-002835GM
D.C.A. FILE NO.: LC-97-CO I

JURISDICTION AND INITIAL BRIEF

AUTHORITY OF RIGHT OF JURISDICTION OF THE SUPREME COURT OF THE STATE OF FLORIDA

Pursuant to Rule 9.030. Jurisdiction of Courts
(a)Jurisdiction of Supreme Court
(1)Appeal Jurisdiction
(A)The Supreme Court shall review by appeal
(ii)Decisions of District Courts of Appeal declaring invalid a state statute or a provision of the state constitution.

State statutes and provisions of the state constitution declared invalid by the lower tribunes actions, of record.

FLORIDA STATUTES DECLARED INVALID BY THE LOWER TRIBUNES ACTION IN RECORD

Item 1. Section 163.3213(13)
Item 8. Section 163.3213
Item 9. Section 163.3213(2)(a)
Chapter 120

Item 10. Section 120.52(12)(b)
Item 11. Section 163.3184(l)(a)
Item 12. Chapter 163, Part 11, Chapter 163.3184, Chapter 163.3194(3)(5), Chapter 193, Taxation and Finance, and Chapter 193.461
Items 13 - 17. Chapter 129 and Chapter 380
Items 18 - 20. Chapter 163, Part 11 and Chapter 380
Item 24. Section 163.3220, Chapter 380 and Section 163.3161 15,16 Chapter 129
Sections 193.023, 193.092, Chapter 194, Administrative and Judicial Review of Property Taxes, Part 11, Judicial Review,
Sections 194.171, 194.211 and 194.231
Sections 120.53(l)(b), 163.3202 (5) and 163.3213
Chapter 120.163, Part 11
Section 120.52(12)
Sections 609-2.019(4)
Section 60Q-2
Section 60Q-2
Section 60Q-2
Section 60Q-2

PROVISION OF THE STATE CONSTITUTION DECLARED INVALID BY THE LOWER TRIBUNES ACTION

1. "No state shall deny to any person who lives within it's jurisdiction the equal protection of the law.
2. "No state shall deprive any person of life, liberty or property without due process"
3. "No state shall deny any citizen to anticipate directly or indirectly in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right of petition."
4. Principle 218, from the First Amendment of the Constitution.
5. Principle 168, from Article 111.2.1.
6. Principle 166, from Article 111.1.

DISCRETION JURISDICTION
AUTHORITY OF RIGHT OF DISCRETION JURISDICTION OF THE SUPREME COURT OF THE STATE OF FLORIDA

Pursuant to Rule 9.030(2), Discretion Jurisdictionary. Jurisdiction of the Supreme Court may be sought to review.

(A)Decisions of District Court of Appeal that.

(i)Expressly declare valid a State Statute.

(ii)Expressly construe a provision of the state or federal constitution

(v)Pass upon a question certified to be of great public importance.

(B)(i)To be of great public importance

(ii)To have a great effect on the proper administration of justice and

Rule 9.120, Discretionary Proceedings to Review Decisions of District Court of Appeal.

(a) APPLICABILITY. This rule applies to those proceedings that invoke the Discretionary Jurisdiction of the Supreme Court cited and described in Rule 9.030(2), (a), (i), (ii), (B), (i), (ii) and (3) Original Jurisdiction, District Courts of Appeal may issue Writs of Mandamus, Prohibition, Quo Warranto, and Common Law Certiorari, and all Writs necessary to the complete exercise of the courts jurisdiction; or any judge thereof may issue Writs of Habeas Corpus returnable before the court or any judge thereof, or before any circuit judge within the territorial jurisdiction of the court and Rule 9.040, General Provisions.

(a) Complete Determination. In all proceedings a court shall have such jurisdiction as maybe necessary for a complete determination of the cause and

Rule 9.315m Summary Disposition.

(b) Summary Reversal. After service of the answer brief in appeals under Rule 9.110, 9.130 or 9.140, or after service of the reply brief if a cross-appeal has been filed, the court may summarily reverse the order to be reviewed if the court finds that no meritorious basis exists for affirmance and the order otherwise is subject to reversal.

The true nature and basis for this appeals jurisdiction is the lower inferior tribunes has denied the petitioner/appellant, Jack David Kelly, his social, civil, and constitutional rights guaranteed by the Constitution of the United States of America, the Constitution of the State of Florida, the Florida Statutes, International Law and Authorities (Provisions) of General Law cited in this instant case and all authorities cited in all interrelated cases cited in this instant cases docketing statement and by proof of the mandate issue August 19, 1998 to Donald R. Alexander, Administrative Law Judge, Division of Administrative Hearings.

Whereas filed in this instant case (cause) in this court identified as Exhibit "B" hereto attached and made a part

hereof and attached letter to Ms. Ann Cole, Clerk, Division of Administrative Hearings. Item (i) of Rule 9.030(2)(A) the lower tribune has overlooked, misapprehended or error and has wrongly expressly declared valid State Statute 9.315(a) when Rule 9.35(b) is applicable pursuant to Rule 9.040 General Provisions, proven by the true nature of these orders and basis for this appeal is the lower tribunes has wrongly denied the petitioner/appellant, Jack David Kelly, his social, civil and constitutional rights guaranteed by the Constitution of the United States of America, the Constitution of the State of Florida, the Florida Statutes, International Law and Authorities of General Law cited in this instant case and all authorities cited in interrelated cases cited in this instant cases docketing statement and the mandate issued August 19, 1998, to Donald R. Alexander, Administrative Law Judge, Division of Administrative Hearings, whereas filed in this instant case identified as Exhibit "B".

Item (ii) Wrongly expressly construed a provision of the state and federal constitution, state constitution wrong for same reason of Item (i) above. Federal Constitution wrong for the reasons cited in right of jurisdiction of the jurisdiction of the Supreme Court, Page 2, 3.

Item (V) Wrongly passed upon a question certified to be of great public importance.

Item (v) above is certainty certified by the state and federal constitution rights to be of great public importance and

Item (B)(i) By the above Items (i), (ii), (v) and Exhibit "B" above certainly substances Item (B)(i) is of great public importance and to have a great effect on the proper administration of justice as required in (B)(ii) for Discretionary Jurisdiction and is certainly applicable under and pursuant to Rule 9.120(a) and applicability under and pursuant to Rule 9.040, General Provisions and (3) Original Jurisdiction.

(a) Complete Determination. In all proceedings a court shall have such jurisdiction as may be necessary for a complete determination of the cause as is required in this instant case for a summary reversal after service of the answer brief.

STATEMENT OF THE CASE INCLUDING THE NATURE OF THE CASE

The first action of this instant case was a verified petition for a formal administrative hearing pursuant to Section 163.3213(13), Fla. Statutes (1995) and the Rules of the

Department of Community Affairs, Chapter 9J-24.007(l)(b) petitioning Escambia County and the Department of Community Affairs, State of Florida.

Substantial Interest (very substantial) interests of the petitioner/appellant, Jack David Kelly, as cited in the Jurisdictional Authority, substantial grounds in support of the facts alleged, personal rights that substantially affected persons have the right to maintain administrative actions which assure these rights pursuant to Chapter 120, Florida Statutes, citing Section 120.52(12)(b), according to said statute, a "party"means "any other person who as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action and who makes an appearance as a party petitioner/appellant, Jack David Kelly, by his constitutional rights as a citizen, resident and taxpayer of Escambia county and the State of Florida is a "very substantially affected person" as defined by Chapter 120, Florida Statutes Chapter 163, Part 11, County and Municipal Development Regulations 163.3184, 163.3194(3)(5), Legal Status of Comprehensive Plan and Chapter 193 Taxation and Finance and 193.461 and with Chapter 129, Florida Statutes, all rights and authorities cited in Table of Authorities identified as Exhibit "A".

ARGUMENT

Facts and other information consolidating issues with facts and truth on record and the grounds and basis on which this argument is based, which the petitioner/appellant contends is material in addition to all cited authorities cited in Table of Authorities identified as Exhibit "A" hereto attached and made a part hereof this argument which address every issue with page numbers listed of argument to each issue.

The state's comprehensive plan "act" 'between the State of Florida and Escambia County, Florida is a binding agreement as a matter of law as to goals, objectives, policies and procedure requirements and not subject to repudiation until or unless the performance of the Land Development Regulations (L.D.R.'s) fail, which is the condition of the comprehensive plan act and it's Land Development Code (L.D.C.) therefore by not being in compliance with each other, (the two (2) parts of the agreement) an acceptable plan does not exist.

Therefore in view of the above, fact documented by the

petition filed by the petitioner/appellant, Jack David Kelly and the Department of Community Affairs, State of Florida and the fact that the lower tribunes has denied and administrative hearing on such is ultimate fact of color of law being committed (without jurisdictional authority) by the lower inferior tribunes and their officials that represent the people in protecting their (the peoples) health, safety and welfare. therefore the lower courts of Florida judgments, decrees, orders, decisions was and had to be prejudicial without authority, (color of law) and bias or in error, misapprehended or overlooked. Therefore this instant appeal to this Honorable Court should be allowed, the judgments, decrees, etc., should be reversed and all the cited interrelated cases be consolidated and remanded for further proceedings with this Honorable Court of the State of Florida exercising it's Supervisory and Jurisdictional powers for protection of the health, safety and welfare of the people, truth and justice and the Constitutional Rights of the petitioner/appellant, Jack David Kelly.

CONCLUSION AND RELIEF SOUGHT

Pursuant to Rule 9.210, Briefs (6). Wherefore by the rights, authority and reasons cited above the petitioner/appellant asks this Honorable court, the Supreme Court of Florida, consolidate all cited interrelated cases and remand this instant case for further proceedings with this Honorable Court, the Supreme court of the State of Florida exercising it's supervisory and jurisdictional powers for protection of the health, safety and welfare of the people, truth and justice and the constitutional rights of the petitioner/appellant, Jack David Kelly's social, civil and constitutional rights as a "citizen" of the United States of America and the State of Florida.

By/s/ JACK DAVID KELLY, Pro-Se
1 Summit Boulevard # 87
Pensacola, FL 32503 (850) 438-4785

App. XVIII
EXHIBIT

JACK DAVID KELLY and DEPARTMENT OF COMMUNITY AFFAIRS, STATE OF FLORIDA,
Appellant, petitioner

CASE NO. 93-13

ESCAMBIA COUNTY, and HOME BUILDERS OF WEST FLORIDA, INC.,
Appellees. respondent

BY ORDER OF THE-COURT:

In light of this court's affirmance of the lower tribunal, appellees' motions to strike and dismiss are denied. Appellees' motions for attorney's fees are also denied.

I HEREBY CERTIFY that the foregoing is copy of the original court order.

By/s/ Jon S. Wheeler, Clerk

By: Deputy Clerk

Copies:

Jack D. Kelly
David G. Tucker
Janet Lander
Robert A. Emmanuel
William W. Merrill, III

App. XIX

SUPREME COURT OF FLORIDA

TUESDAY, SEPTEMBER 8,1998

JACK DAVID KELLY,
Appellant/Petitioner,

V.

ESCAMBIA COUNTY, et -al.,
Appellees/Respondents.

CASE NO. 93,799

DISTRICT COURT OF APPEAL,
I ST DISTRICT - NO. 98-13

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (I 5) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy

TEST:

cc: Hon. Jon S. Wheeler, Clerk
Mr. Jack David Kelly
Mr. Robert A. Emmanuel
Mr. William Merrill, III

Sid J. White
Clerk Supreme Court

App. XX

IN THE SUPREME COURT OF FLORIDA
500 SOUTH DUVAL STREET
TALLAHASSEE, FLORIDA 32399-1927

JACK DAVID KELLY and
DEPARTMENT OF COMMUNITY AFFAIRS,
STATE OF FLORIDA,
Appellant,

CASE NO. 93-799

MOTION FOR
REINSTATEMENT
OF APPEAL TO THE
SUPREME COURT OF FLORIDA

ESCAMBIA COUNTY, and
HOME BUILDERS OF WEST
FLORIDA, INC.,
Appellees.

LOWER TRIBUNALS: 98-00013
DOAH CASE: 97-002835GM
D.C.A. FILE NO.: LC-97 CO I

MOTION FOR REINSTATEMENT

Now comes the Plaintiff/Petitioner/Appellant of this case, Jack David Kelly, moves the court for reinstatement.

By/s/ JACK DAVID KELLY, Pro-Se
1 Summit Boulevard # 87
Pensacola, FL 32503 (850) 438-4785

GROUNDS ON WHICH THE MOTION FOR
REINSTATEMENT IS BASED
ARGUMENT IN SUPPORT THEREOF
APPROPRIATE CITATIONS OF AUTHORITY
AND
THE RELIEF SOUGHT

GROUNDS ON WHICH THE MOTION FOR REINSTATEMENT IS BASED

Provisions of the State of Florida Constitution that is guaranteed by the Constitution of the State of Florida, Case Law and Florida Statutes Authorities that was violated by the Clerk of the Court in his action in this case and therefore the Grounds and Basis for Reinstatement of this case.

Article 1, Declaration of Rights of the Constitution of the State of Florida.

Section 9, Due Process - No person shall be deprived of life, liberty or property without due process of law.

Section 10, Prohibited Laws - No bill of attainder x post facto law or law impairing the obligation of contracts shall be passed.

Article 5, Section 3(b)(ii) - The Supreme Court shall hear appeal from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

Article 12, Section 17, Conflicting Provisions - This schedule is designed to effect the orderly transition of government from the Constitution of 1885, as amended to the revision and shall control in all cases of conflict with any part of Article I through 111, VII and IX through XI herein.

CASE LAW

Florida Medical Ass'n v. Department of Professional Regulations, 426 so.2d, 1112, 1118, (Fla. Ist D.C.A. 1893)

FLORIDA STATUES

Fla. Statute 915 (B), Summary Reversal(SEE rule 93159b)

ARGUMENT IN SUPPORT THEREOF

Such protection of the provision of the constitution rights provided therein, the Florida Statutes and Case Law Authorities cited herein enters automatically and accumatively when such encroachment enters upon an interest protected by said constitutional rights, Fla. Statutes, and Case Law Authorities.

Citing Case Law Authority, Florida Medical Ass'n v. Department of Professional Regulations, 426 so.2d, 1112, 1118,

BEST AVAILABLE COPY

(Fla. Ist D.C.A. 1993). In the context of a rule challenge, the protected zone of interest need not be found in the enabling statute of the challenged rule itself involves the claim that [the enabling statute] (as in this instant case) does not authorize the rule it is obvious that the effects of other statutes must be considered in determining standing (authority) likewise provisions of state constitution rights such as due process of law, such as in this instant case been declared invalid by the action, ruling of the clerk and the court in this instant case.

In addition since there is no legal standing meritorious are legal authority for the per curium or affirmance decision in this instance case, bared by the cited protection of the constitution, Fla. Statute and Case Law, Fla. Statute 915(b) (SEE 9315(b) Summary reversal after service of the Answer Brief if a cross appeal has been filed, the court may Summary Reverse the order to be reviewed if the court finds that no meritorious basis exist for affirmance otherwise is subject to reversal, since the crux of the controversy involves the claim of the appellant is that the enabling statute does not rule. In this instant case it is obvious that the effects of other and constitution provisions, rights of due process of law was denied which must be considered and was not and therefore declared invalid violating a provision of the state constitution.

No decision, ruling can properly be made without taking into consideration all constitutional guaranteed provisions (rights), authorities of applicable Florida Statutes and Case Law cited herein, that was not done in this instant ruling and certainly not done in a properly timely or properly balanced manner as required by due process, the clerk and court did violate the Petitioner/Appellant's civil and and Article 5, Section 3(b)(3).

FACTS

Under the constitutional plan the powers of this court are limited by the very foundations of it of which due process of law is one which is guaranteed by the oath of office of this court and is called for, mandated for the proper administration of justice and fairness, this court operates as a supervisory body in the judicial system for the state and is very essential for the protection of the very foundations guaranteed by the constitution such as due process of law to the settlement of issues of great public importance such as this instance case and the preservation of uniformity of principle and practice.

A staggering case load should not and can not effect justice

under this foundation guaranteed both by the state and federal constitution, a heavy case load can not justify spawning confusion in the judicial system as has been done in this instant case nor can a dissenting or concurring opinion support jurisdiction or authority when it is plain and simple, clearly stated in the provisions of protection, rights guaranteed in the constitution of both the State of Florida Constitution and the Constitution of the United States of America that it does not.

RELIEF SOUGHT

The relief sought is protection from the above cited violations of the Petitioner/Appellant, Jack David Kelly's social, civil and constitutional rights of the constitution, Florida Statutes, Cited Case, and Cited Case Law Rights.

Wherefore by the rights, authorities and reasons cited above the Petitioner/Appellant ask this honorable court, the Supreme Court of Florida to Reinstate this and all interrelated cases cited in this case record for further proceedings with this honorable court exercising its supervisory powers for fairness, -justice and protection of the health, safety and welfare of the people with truth and justice and the preservation and protection of very substantial interest of the social, civil, and constitutional rights of the Petitioner/Appellant's rights protected by the constitution, Florida Statutes and Case Law cited above as a citizen and resident of the United States of America and the State of Florida.

By/s/ JACK DAVID KELLY, Pro-Se
1 Summit Boulevard # 87
Pensacola, FL 32503 (850) 438-4785

EXHIBIT "B"

SUPREME COURT OF FLORIDA

TUESDAY, SEPTEMBER 8,1998

JACK DAVID KELLY,
Appellant/Petitioner,

V.

ESCAMBIA COUNTY, et al.,
Appellees/Respondents.

CASE NO. 93,799

DISTRICT COURT OF APPEAL,
1 ST DISTRICT - NO. 98-13

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

cc:Hon. Jon S. Wheeler, Clerk
Jack David Kelly
Mr. Robert A. Emmanuel
Mr. William Merrill, III

EXHIBIT "B"

SID J. WHITE. CLERK
Supreme Court of Florida
500 SOUTH DUVAL STREET'
TALLAHASSEE 32399-1927
(850) 488-0125

Mr. Jack David Kelly
3331 Summit Boulevard #87
Pensacola, Florida 32503

9/8/98 filed 8/27/98
JACK DAVID KELLY
V.
ESCAMBIA COUNTY, et al.
CASE NO. 93,799
DCA-1 NO. 98-13

I have this date received the below-listed pleadings or documents:

Notice of Appeal/Notice to Invoke Discretionary Jurisdiction filed in the DCA- I on 8/26/98 w/copy of DCA opinion.

$250.00 Filing Fee, receipt no. R-98139").
Please make reference to the case number in all correspondence and pleadings.

Most cordially,
Clerk, Supreme Court

ALL PLEADINGS SIGNED BY
AN ATTORNEY MUST INCLUDE
THE ATTORNEY'S FLORIDA
BAR NUMBER.

cc: Hon. Jon S. Wheeler, Clerk
Mr. William Merrill, III
Mr. Robert A. Emmanuel

App. XXI

IN THE SUPREME COURT OF FLORIDA
500 SOUTH DUVAL STREET
TALLAHASSEE, FLORIDA 32399-1927

JACK DAVID KELLY and
DEPARTMENT OF COMMUNITY AFFAIRS,
STATE OF FLORIDA,
Appellant,

CASE NO. 93-799

MOTION FOR
REINSTATEMENT
OF APPEAL TO THE
SUPREME COURT OF FLORIDA

ESCAMBIA COUNTY, and
HOME BUILDERS OF WEST
FLORIDA, INC.,
Appellees.

LOWER TRIBUNALS: 98-00013
DOAH CASE: 97-002835GM
D.C.A. FILE NO.: LC-97-CO I

REQUEST FOR ORAL ARGUMENT

Pursuant to Florida Rules of Appellate Procedure 9.320, Oral Argument, page 53.

By/s/ JACK DAVID KELLY, Pro-Se
1 Summit Boulevard # 87
Pensacola, FL 32503 (850) 438-4785

App. XXII

Rule 9.315 Summary Disposition

(a) **Summary Affirmance.** After service of the initial brief in appeals under rule 9.110, 9.130, or 9.140, or after service of the answer brief if a cross appeal has been filed, the court may summarily affirm the order to be reviewed if the court finds that no preliminary basis for reversal has been demonstrated.

(b) **Summary Reversal.** After service of the answer brief in appeals under rule 9.110, 9.130, or 9.140, or after service of the answer brief if a cross appeal has been filed, the court may summarily reverse the order to be reviewed if the court finds that no meritorious basis exists for affirmance and the order otherwise is subject to reversal.

(c) **Motions Not Permitted.** This rule may be invoked only on the court's own motion. A party may not request summary disposition.

Court Commentary

1987. This rule contemplates a screening process by the appellate courts. More time will be spent early in the case to save more time later. The rule in that appellant has an opportunity to file a full brief. The thought behind this proposal is to allow expeditious disposition of non meritorious appeals or obviously meritorious appeals.